

# WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

## LAND QUALITY DIVISION

### SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Black Hills Bentonite, LLC (BHB), a company authorized to do business in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation (NOV) Docket No. 5602-15, dated August 12, 2015. The NOV was issued by LQD following an Annual Inspection of Permit 281C conducted on July 17, 2015. The NOV alleges that BHB failed to follow the approved Permit 281C Mine and Reclamation Plan and the LQD Non-Coal Rules and Regulations by:

1. failing to construct an adequate buffer of stripped ground between native lands and adjacent mine disturbances,
2. failing to adequately strip topsoil from all areas affected by mining, such as overburden stockpiles, along access roads, and adjacent to excavation areas in recently opened pits.
3. failing to strip topsoil to the recommended salvage depths presented in the Permit,
4. failing to identify topsoil stockpile locations prior to salvaging topsoil, and
5. failing to conform to standardized road construction practices specified in the Permit.

W.S. §35-11-415(b)(ii) requires that all mining and reclamation activities within a permit area conform to the approved plan. LQD Non-Coal Rules and Regulations, Chapter 3, Section 2(c)(i)(A) requires that topsoil be removed from all areas to be affected by mining and that it be properly segregated and stockpiled for use in reclamation.

W.S. §35-11-901(a)(ii) authorizes the WDEQ/LQD to negotiate a stipulated settlement, including a cash settlement payment, in lieu of litigation. To that end, BHB and WDEQ/LQD hereby stipulate and agree as follows:

1. The WDEQ, pursuant to W.S. §35-11-104, is a Department in the executive branch of the state government of Wyoming and is principally situated in Cheyenne, Wyoming. WDEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act, including all provisions of the WDEQ/LQD Non-Coal Rules and Regulations.
2. BHB is the operator of a bentonite mining operation located in Washakie County, Wyoming. As part of its operation, BHB has mined mineral from this site and distributed or sold the mined mineral for commercial use.
3. BHB agrees to pay a penalty of thirty thousand dollars (\$30,000) to resolve this matter in lieu of litigation under W.S. §35-11-901(a)(ii). Payment of one-half of this amount, fifteen thousand dollars (\$15,000), is due and payable within thirty (30) days of full execution of this Settlement Agreement by check payable to the Wyoming Dept. of Environmental Quality and shall be sent to: Administrator, Wyoming

Department of Environmental Quality, Land Quality Division, 200 W. 17th Street,  
Lower Level, Cheyenne, WY 82002.

4. One-half of the penalty, fifteen thousand dollars (\$15,000) will be paid within thirty (30) days of full execution of this Settlement Agreement to the Wyoming Wildlife and Natural Resource Trust as a Supplemental Environmental Project to help fund enhancement of wildlife habitat in the State. A copy of the receipt confirming this donation will be provided to WDEQ/LQD as soon as it is received from the Trust.
5. Recognizing that issues related to safety and steep terrain may be a consideration, adequate stripped buffer areas will be established between native lands and mining disturbances.
6. All out-of-pit haul roads will be properly constructed and maintained according to the practices and requirements specified in the Permit.
7. All topsoil will be salvaged, consolidated, and properly stockpiled prior to mining. Salvage depths will be closely monitored in the field by a qualified representative of BHB. Topsoil stockpiles will be established at planned locations and properly constructed and stabilized following commitments in the Permit.
8. This signed Settlement Agreement and payment of a cash settlement amount shall constitute full satisfaction and resolution of all claims by the WDEQ/LQD against BHB based on the violations alleged in the NOV Docket No. 5602-15. Contingent upon BHB's compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against BHB for these particular violations cited in this Settlement Agreement. By this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in the NOV.
9. BHB waives any statute of limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in NOV Docket No. 5602-15 in the event that BHB fails to fulfill its obligations under this Settlement Agreement.
10. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should BHB violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
11. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.



12. Notwithstanding any other language in this Settlement Agreement, the State of Wyoming and WDEQ do not waive sovereign immunity by entering into this Settlement Agreement with Black Hills Bentonite, LLC and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
13. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
14. This Settlement Agreement is binding upon Black Hills Bentonite, LLC, its successors and assignees, and upon the WDEQ/LQD.
15. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

**FOR: Black Hills Bentonite, LLC**

Signed:  Date: 10-26-2015


Typed: Thomas A. Thorson

Title: President

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**FOR: The Wyoming Department of Environmental Quality:**

 Date: 12/3/2015  
Todd Parfitt, Director

 Date: 12/3/15  
Kyle Wendtland, Administrator

xc: LQD District II  
NOV Docket No. 5602-12